

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

_____)	
WEBSEED, INC. and BRIGHTeon)	
MEDIA, INC.,)	
)	
Plaintiffs,)	
)	Civil Action No. 1:24-cv-00576-DII
v.)	
)	
DEPARTMENT OF STATE, et al.,)	
)	
Defendants.)	
_____)	

DEFENDANT META PLATFORMS, INC.'S OPPOSED MOTION TO TRANSFER

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

BACKGROUND 1

 A. Meta and Its Terms of Service 1

 B. Plaintiffs and Their Use of Facebook 2

LEGAL STANDARD..... 5

ARGUMENT 5

I. The Forum-Selection Clause Requires Transfer Of Plaintiffs’ Claims Against
Meta. 5

 A. The Forum-Selection Clause Is Valid And Enforceable..... 6

 B. The Forum-Selection Clause Is Mandatory. 8

 C. Plaintiffs’ Claims Fall Within The Clause’s Scope. 9

 D. The Public Interest Does Not Justify Disregarding the Parties’ Agreement. 10

II. The Court Should Transfer The Entire Action Or, Alternatively, Sever The
Claims Against Meta..... 14

CONCLUSION..... 15

CERTIFICATE OF CONFERENCE

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Cases

Atlantic Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas,
571 U.S. 49 (2013).....5, 8, 10, 13

BuzzBallz, LLC v. MPL Brands NV, Inc.,
2024 WL 3282492 (W.D. Tex. July 2, 2024)12, 14

Children’s Health Def. v. Facebook Inc.,
546 F. Supp. 3d 909 (N.D. Cal. 2021)12

Davis v. Meta Platforms, Inc.,
2023 WL 4670491 (E.D. Tex. July 20, 2023)5, 6

DH Int’l Ltd. v. Apple Inc.,
2024 WL 4119374 (W.D. Tex. Aug. 30, 2024)11

Doe v. Facebook, Inc.,
2023 WL 3483891 (S.D. Tex. May 16, 2023)6

Dolin v. Facebook, Inc.,
289 F. Supp. 3d 1153 (D. Haw. 2018)7

E.K.D. ex rel. Dawes v. Facebook, Inc.,
885 F. Supp. 2d 894 (S.D. Ill. 2012).....7

Hayes v. Facebook,
2019 WL 8275335 (D. Colo. Mar. 6, 2019)7

Haynsworth v. The Corp.,
121 F.3d 956 (5th Cir. 1997)6

Hubbard Media Grp., LLC v. Instagram, Inc.,
2021 WL 6841640 (D. Minn. May, 5, 2021).....7

Kidstar v. Facebook, Inc.,
2020 WL 4382279 (D.N.J. July 31, 2020).....7

Loomer v. Facebook, Inc.,
2020 WL 2926357 (S.D. Fla. Apr. 13, 2020)7, 9

Loveland v. Facebook,
2021 WL 1734800 (E.D. Pa. May 3, 2021)7

Matthews v. Tidewater, Inc.,
108 F.4th 361 (5th Cir. 2024)5, 8

Mendoza v. Microsoft, Inc.,
1 F. Supp. 3d 533 (W.D. Tex. 2014).....2

Moates v. Facebook Inc.,
2021 WL 3013371 (E.D. Tex. May 14, 2021).....7

Moates v. Facebook, Inc.,
2022 WL 2707745 (E.D. Tex. June 13, 2022).....7, 11, 12

Nat’l Shipping Co. of Saudi Arabia v. Valero Mktg. & Supply Co.,
2019 WL 13036074 (S.D. Tex. Dec. 26, 2019).....15

Nay v. All. RV, LLC,
2024 WL 3311428 (W.D. Tex. Apr. 17, 2024).....10

Noble House, L.L.C. v. Certain Underwriters at Lloyd’s, London,
67 F.4th 243 (5th Cir. 2023)6

NS412, LLC v. Finch,
2019 WL 4329947 (N.D. Tex. Sept. 11, 2019).....8

O’Handley v. Padilla,
579 F. Supp. 3d 1163 (N.D. Cal. 2022)12

PCL Civ. Constructors, Inc. v. Arch Ins.,
979 F.3d 1070 (5th Cir. 2020)8

Phila. Indem. Ins. v. White,
490 S.W.3d 468 (Tex. 2016).....8

Rassoli v. Intuit Inc.,
2012 WL 949400 (S.D. Tex. Mar. 19, 2012).....8

Rogalinski v. Meta Platforms, Inc.,
2022 WL 3219368 (N.D. Cal. Aug. 9, 2022)12

Rogalinski v. Meta Platforms, Inc.,
No. 8:21-cv-1749 (M.D. Fla. Apr. 22, 2022).....7

In re Rolls Royce Corp.,
775 F.3d 671 (5th Cir. 2014)14, 15

Sobel ex rel. SolarWinds Corp. v. Thompson,
2023 WL 4356066 (W.D. Tex. July 5, 2023)11

Soffin v. eChannel Network, Inc.,
2014 WL 2938347 (S.D. Fla. June 30, 2014).....7

Texas Nationalist Movement v. Meta Platforms, Inc.,
 No. 1:22-cv-00572-MJT (E.D. Tex. Aug. 17, 2023)6, 9

Thomas v. Facebook, Inc.,
 2018 WL 3915585 (E.D. Cal. Aug. 15, 2018).....7

In re TikTok, Inc.,
 85 F.4th 352 (5th Cir. 2023)12, 13, 14

Trump v. Facebook, Inc.,
 No. 1:21-cv-22440 (S.D. Fla. Nov. 19, 2021)7

In re Volkswagen AG,
 371 F.3d 201 (5th Cir. 2004)11

Weber v. PACT XPP Techs., AG,
 811 F.3d 758 (5th Cir. 2016)8

Wilpritt v. Cap. One Bank USA, N.A.,
 2023 WL 8869366 (N.D. Tex. Nov. 30, 2023).....13

Wise Guys I v. Meta Platforms, Inc.,
 2023 WL 8434452 (N.D. Tex. Dec. 4, 2023)6, 9

Statutes

28 U.S.C. § 1391(b)4

28 U.S.C. § 1391(b)(2)14

28 U.S.C. § 1404(a) *passim*

Rules

Fed. R. Civ. P. 2115

Other Authorities

Meta Transparency Center, *Inauthentic Behavior* (accessed Sept. 11, 2024),
<https://perma.cc/3W47-CVDJ>.....1

Meta Transparency Center, *October 2020 Inauthentic Behavior Report* (accessed
 Sept. 12, 2024), <https://perma.cc/GZE4-U6WC>.....3, 4

Rumble, *Website Terms and Conditions of Use and Agency Agreement* (Sept. 2,
 2024), <https://perma.cc/Y6X9-4XGG>.....6

United States Courts, *Table C-5 – U.S. District Courts – Civil Federal Judicial
 Caseload Statistics* (Mar. 31, 2024), <https://perma.cc/G8NY-N54A>11

United States Courts, *Table C-3—U.S. District Courts—Civil Statistical Tables
For The Federal Judiciary* (June 30, 2024), <https://perma.cc/XUL4-MXFK>.....11

X Corp., *Terms of Service* (Sept. 29, 2023), <https://perma.cc/N55Q-ZWZ8>6

YouTube, *Terms of Service* (Dec. 15, 2023), <https://perma.cc/443Z-CA7X>6

INTRODUCTION

This lawsuit is meritless and should be dismissed as a matter of law, as Meta Platforms, Inc. (“Meta”) will explain in a forthcoming motion to dismiss. Yet before this Court (or any court) addresses the legal deficiencies in the Amended Complaint, it should first address a threshold defect: Webseed, Inc. and Brighteon Media, Inc. (“Plaintiffs”) sued in the wrong forum. Pursuant to a binding and mandatory forum-selection clause, the Court should decline to hear this case and transfer it to the Northern District of California—the forum in which Plaintiffs agreed to bring any lawsuit against Meta that arises out of or relates to the Company’s Terms of Service, as this case does.

BACKGROUND

A. Meta and Its Terms of Service

Meta is a public company headquartered in San Mateo County, California. Doc. 4 (“Am. Compl.”) ¶ 32. It operates a variety of online applications, including Facebook, which billions of individuals worldwide use to post, share, and view content in a variety of media formats.

Meta invests significant resources into developing and enforcing rules and standards for user-created content posted to Facebook. For example, under its Inauthentic Behavior policy, Meta does not “allow people to misrepresent themselves on Facebook, use fake accounts, [or] artificially boost the popularity of content.” Meta Transparency Center, *Inauthentic Behavior* (accessed Sept. 11, 2024), <https://perma.cc/3W47-CVDJ>. Each of Facebook’s content policies are set forth in its Community Standards, which users agree to follow under Facebook’s Terms of Service (“Terms”).¹

¹ At various times, Facebook’s Terms also have been referred to as “Terms of Use” or a “Statement of Rights and Responsibilities.” As used in this motion, the reference to “Terms” includes all of these formulations.

Since at least 2004, Facebook has required all users to agree to Facebook’s Terms when registering an account. *See* Decl. of Meghan Andre ¶¶ 3, 4 (attached hereto).² Before clicking the button to complete the registration process, Facebook presents prospective users with a message stating that by creating an account, they agree to abide by the Terms. *See id.* ¶ 5. This message includes a hyperlink to the then-applicable Terms, *see id.*, which informs all Facebook users that its “Terms govern [their] use of Facebook.” Ex. A at 2 (current Terms).

Since 2005, the Terms have included a mandatory California forum-selection clause. *See* Andre Decl. ¶ 7. Although the exact language has undergone minor revisions over the years, the forum-selection clause has always required suits arising out of or relating to the Terms to be brought in state or federal court in California. *See* Exs. A-HH. The current version of Facebook’s Terms has been in effect since July 2022, *see* Andre Decl. ¶ 16, and provides as follows:

You and Meta each agree that *any claim, cause of action, or dispute between us that arises out of or relates to these Terms or your access or use of the Meta Products shall be resolved exclusively in the U.S. District Court for the Northern District of California* or a state court located in San Mateo County. You also agree to submit to the personal jurisdiction of either of these courts for the purpose of litigating any such claim, and that the laws of the State of California will govern these Terms and any claim, cause of action, or dispute without regard to conflict of law provisions.

Ex. A at 16 (emphasis added).

B. Plaintiffs and Their Use of Facebook

Plaintiffs own and operate several news, opinion, and health-supplement brands whose content they promote on Facebook. Those brands include Brighteon, Health Ranger, News Target, and—most relevant to this lawsuit—Natural News. *See* Am. Compl. ¶ 12; Docs. 4-1, 4-2. Natural

² In considering a motion to transfer venue pursuant to 28 U.S.C. § 1404(a), “a court can rely on undisputed facts presented to the court by affidavit, deposition, stipulation, or other relevant documents.” *Mendoza v. Microsoft, Inc.*, 1 F. Supp. 3d 533, 539 n.2 (W.D. Tex. 2014) (citation and internal quotation marks omitted).

News operates numerous Facebook Pages associated with an individual named Mike Adams. *See* Andre Decl. ¶¶ 9, 11-12. In addition to serving as an administrator for these Facebook Pages, *see id.* ¶ 12, Adams is the President of Webseed, Inc. and Brighteon Media, Inc.³

Adams registered for a Facebook account on December 8, 2008. *Id.* ¶ 13. Like all other Facebook users, as part of the registration process, Facebook presented Adams with a message stating that by creating an account, he agrees to abide by the Terms, and a hyperlink to the Terms in force at the time. *See id.* ¶ 5. By proceeding with registration, Adams agreed to abide by those Terms. *See id.* ¶ 13 (citing Ex. V). As relevant here, Adams agreed “not to commence or prosecute any action” against the Company “other than in the state and federal courts of California.” Ex. V. at 14. Adams also acknowledged that by continuing to use Facebook, he assented to any modifications to those Terms posted on Facebook. *See id.* at 2.

Beginning in June 2019, pursuant to Facebook’s Terms, Meta removed Natural News’s Facebook presence and blocked links associated with Natural News domains due to “repeated and egregious” violations of the Company’s Inauthentic Behavior policy. Meta Transparency Center, *October 2020 Inauthentic Behavior Report*, at 6 (accessed Sept. 12, 2024), <https://perma.cc/GZE4-U6WC>; *see also* Ex. E (Terms effective July 31, 2019) at 9 (providing that Meta “can remove or restrict access to content that is in violation” of its Community Standards). As Meta reported publicly several months later, “[t]he US business behind these Pages relied on content farms in Macedonia and the Philippines, misled people about the origin and popularity of its content, inauthentically amplified its posts with fake accounts and engaged in deceptive tactics to evade

³ *See* Ex. JJ (Wyoming Secretary of State, *2024 Profit Corporation Annual Report: Webseed, Inc.*); Ex. KK. (Wyoming Secretary of State, *2024 Profit Corporation Annual Report: Brighteon Media, Inc.*).

our [Inauthentic Behavior] enforcement.” *October 2020 Inauthentic Behavior Report, supra*, at 6. Adams was last active on Facebook on March 26, 2023. *See* Andre Decl. ¶ 16.

Plaintiffs initiated this lawsuit in May 2024, alleging a coordinated effort between government and private actors, motivated by “anti-competitive animus,” to silence “viewpoints that do not square with those of the Government.” Am. Compl. ¶¶ 1-2. Only a single paragraph of the Amended Complaint alleges specific conduct by Meta:

Facebook blocked Natural News’ distribution to over 99% of its followers (2.5 million followers). Fast forwarding, Facebook would end up deleting / wiping out Natural News entirely, which harms not only Plaintiffs but also the 2.5 million followers who solicit Plaintiffs’ natural health related information. In addition to NaturalNews.com, Facebook will not allow anyone else to share links from Plaintiffs’ Brighteon.com site. This is sometimes called domain blocking. Facebook’s conduct was / is little different than that of China where freedoms such as speech do not exist.

Id. ¶ 16 (citation omitted).

At the time Plaintiffs initiated this suit (and at the time of Adams’ last activity on Facebook), the operative version of Facebook’s Terms provided that “any claim, cause of action, or dispute between us that arises out of or relates to these Terms or your access or use of the Meta Products shall be resolved exclusively in the U.S. District Court for the Northern District of California.” Ex. A at 16; *see also* Andre Decl. ¶ 16 (stating that these Terms have been in effect since July 2022). Notwithstanding this express agreement, Plaintiffs filed suit in this district. Plaintiffs cited 28 U.S.C. § 1391(b) as their basis for venue, asserting that “this judicial district is where Plaintiffs maintain their principal place of business” and “various events or omissions which give rise to and /or underlie this suit occurred within this district.” Am. Compl. ¶ 37. Meta now moves to transfer this case to the Northern District of California in accordance with the forum-selection clause.

LEGAL STANDARD

Section 1404(a) provides that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.” 28 U.S.C. § 1404(a). When a party moves for transfer to enforce a forum-selection clause, a court must consider (1) whether the forum-selection clause is valid and enforceable; (2) whether the clause is mandatory or merely permissive; and (3) whether the dispute falls within the scope of the clause. *See Matthews v. Tidewater, Inc.*, 108 F.4th 361, 367 (5th Cir. 2024); *see also Davis v. Meta Platforms, Inc.*, 2023 WL 4670491, at *5 (E.D. Tex. July 20, 2023). Where the court concludes that “the parties have agreed to a valid forum-selection clause,” the plaintiff then “bears the burden of establishing that transfer to the forum for which the parties bargained is unwarranted.” *Atlantic Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 62-63 (2013). In trying to satisfy that burden, “the plaintiff’s choice of forum merits no weight.” *Id.* at 63. Instead, the court “may consider arguments about public-interest factors only.” *Id.* at 64. Because the public interest “will rarely defeat a transfer motion, the practical result is that forum-selection clauses should control except in unusual cases.” *Id.*

ARGUMENT

I. The Forum-Selection Clause Requires Transfer Of Plaintiffs’ Claims Against Meta.

By registering a Facebook account and using Facebook’s services, Plaintiffs contractually agreed to bring any claim that “arises out of or relates to” Facebook’s Terms or Plaintiffs’ use of Facebook in the Northern District of California—the forum where Meta is headquartered and where the vast majority of Meta’s employees and evidence relevant to this lawsuit are likely located. The Court should hold Plaintiffs to their agreement. Facebook’s forum-selection clause is valid, enforceable, and mandatory, and this lawsuit falls squarely within its scope. And none of

the public-interest factors courts have identified in this context counsel against transfer. Accordingly, the Court should grant a transfer pursuant to 28 U.S.C. § 1404(a).

A. The Forum-Selection Clause Is Valid And Enforceable.

There is a “strong presumption” that forum-selection clauses are valid and enforceable—a presumption that can be overcome only “by a clear showing that the clause is unreasonable under the circumstances.” *Noble House, L.L.C. v. Certain Underwriters at Lloyd’s, London*, 67 F.4th 243, 248 (5th Cir. 2023) (citations and internal quotation marks omitted). A clause is unreasonable under the circumstances only if: (1) the clause “was the product of fraud or overreaching”; (2) the clause will deprive a party “of his day in court because of the grave inconvenience or unfairness of the selected forum”; (3) “the fundamental unfairness of the chosen law will deprive the plaintiff of a remedy”; or (4) “enforcement of the forum selection clause would contravene a strong public policy of the forum state.” *Haynsworth v. The Corp.*, 121 F.3d 956, 963 (5th Cir. 1997) (citation and internal quotation marks omitted).

Forum-selection clauses are commonplace in terms of service and are routinely enforced by courts. *See, e.g.*, Andre Decl. ¶ 7; YouTube, *Terms of Service* (Dec. 15, 2023), <https://perma.cc/443Z-CA7X>; X Corp., *Terms of Service* (Sept. 29, 2023), <https://perma.cc/N55Q-ZWZ8>; Rumble, *Website Terms and Conditions of Use and Agency Agreement* (Sept. 2, 2024), <https://perma.cc/Y6X9-4XGG>. Facebook’s Terms have included a forum-selection clause for nearly two decades, *see* Andre Dec. ¶ 7, and over the past two years alone, numerous federal district courts in Texas have upheld the enforceability of Facebook’s forum-selection clause. *See, e.g.*, *Wise Guys I v. Meta Platforms, Inc.*, 2023 WL 8434452, at *1 (N.D. Tex. Dec. 4, 2023); Order Granting Defendant’s Motion to Transfer, *Texas Nationalist Movement v. Meta Platforms, Inc.*, No. 1:22-cv-00572-MJT (E.D. Tex. Aug. 17, 2023), ECF No. 42 (“Ex. LL”); *Davis v. Meta Platforms, Inc.*, 2023 WL 4670491, at *10 (E.D. Tex. July 20, 2023); *Doe v. Facebook, Inc.*, 2023

WL 3483891, at *5 (S.D. Tex. May 16, 2023); *Moates v. Facebook, Inc.*, 2022 WL 2707745 (E.D. Tex. June 13, 2022) (“*Moates IP*”), *report and recommendation adopted*, 2022 WL 2705245 (E.D. Tex. July 12, 2022). Numerous courts throughout the country have also enforced Facebook’s forum-selection clause.⁴

This Court should follow the same approach. Plaintiffs voluntarily agreed to an unambiguous forum-selection clause written in plain English. There can be no serious argument that Plaintiffs were defrauded into the agreement with Facebook. Before completing the registration process, Adams was presented with a message telling him that by signing up for a Facebook account, he was agreeing to its Terms, as well as a hyperlink to the then-current Terms. *See* Andre Decl. ¶ 5. As a sister district recently found, Facebook’s forum-selection clauses are not “deceptively placed or sized”—any user can “easily read the Terms of Service and discover[] them.” *Moates v. Facebook Inc.*, 2021 WL 3013371, at *7 (E.D. Tex. May 14, 2021) (“*Moates P*”).

Adams was “under no obligation or duress at the time [he] entered into the agreement with Facebook.” *Loveland v. Facebook*, 2021 WL 1734800, at *5 (E.D. Pa. May 3, 2021). To the contrary, Adams presumably agreed to the Terms because he wanted to use Facebook to promote content for Webseed and Brighteon, the two companies he runs. It makes no difference that Adams

⁴ *See, e.g.*, Order, *Rogalinski v. Meta Platforms, Inc.*, No. 8:21-cv-1749 (M.D. Fla. Apr. 22, 2022), ECF No. 31; *Hubbard Media Grp., LLC v. Instagram, Inc.*, 2021 WL 6841640, at *5 (D. Minn. May, 5, 2021); Order at 11-16, *Trump v. Facebook, Inc.*, No. 1:21-cv-22440 (S.D. Fla. Nov. 19, 2021), ECF No. 108; *Loomer v. Facebook, Inc.*, 2020 WL 2926357, at *1-3 (S.D. Fla. Apr. 13, 2020); *Soffin v. eChannel Network, Inc.*, 2014 WL 2938347, at *1-2 (S.D. Fla. June 30, 2014); *Dolin v. Facebook, Inc.*, 289 F. Supp. 3d 1153, 1160 (D. Haw. 2018); *Loveland v. Facebook*, 2021 WL 1734800, at *4-6 (E.D. Pa. May 3, 2021); *Kidstar v. Facebook, Inc.*, 2020 WL 4382279, at *3-5 (D.N.J. July 31, 2020); *Hayes v. Facebook*, 2019 WL 8275335, at *2-3 (D. Colo. Mar. 6, 2019); *Thomas v. Facebook, Inc.*, 2018 WL 3915585, at *4 (E.D. Cal. Aug. 15, 2018); *E.K.D. ex rel. Dawes v. Facebook, Inc.*, 885 F. Supp. 2d 894, 900-03 (S.D. Ill. 2012).

manifested his assent with the click of a mouse. *See, e.g., NS412, LLC v. Finch*, 2019 WL 4329947, at *2 (N.D. Tex. Sept. 11, 2019) (noting that “courts routinely enforce clickwrap agreements” that allow assent by clicking on an “accept” button); *Rassoli v. Intuit Inc.*, 2012 WL 949400, at *2 (S.D. Tex. Mar. 19, 2012) (noting that both California and Texas law recognize “clickwrap” agreements and citing cases).

Nor is there any other basis for the Court to conclude that the forum-selection clause is unreasonable. The Northern District of California is a federal court like this one and thus is a fair forum with comparable remedies available for Plaintiffs. And it does not matter that a Texas forum may be more convenient for Plaintiffs, as “the plaintiff’s choice of forum merits no weight” when there is a forum-selection clause. *Atlantic Marine*, 571 U.S. at 63. Finally, enforcing the clause would not interfere with the strong public policy of Texas. To the contrary, “Texas’s strong public policy favoring freedom of contract is firmly embedded in [the State’s] jurisprudence” and means that courts should “respect and enforce the terms of a contract that the parties have freely and voluntarily entered.” *Phila. Indem. Ins. v. White*, 490 S.W.3d 468, 471 (Tex. 2016). In light of these considerations, the Court should hold that the forum-selection clause in Facebook’s Terms is “reasonable, and, consequently, valid and enforceable.” *Matthews*, 108 F.4th at 370.

B. The Forum-Selection Clause Is Mandatory.

The Parties’ forum-selection clause is also mandatory. “A forum selection clause is mandatory if it ‘affirmatively requires that litigation arising from the contract be carried out in a given forum.’” *PCL Civ. Constructors, Inc. v. Arch Ins.*, 979 F.3d 1070, 1073 (5th Cir. 2020) (quoting *Weber v. PACT XPP Techs., AG*, 811 F.3d 758, 768 (5th Cir. 2016)). By contrast, a permissive clause “is only a contractual waiver of personal-jurisdiction and venue objections.” *Weber*, 811 F.3d at 768.

Facebook’s Terms contain a prototypical mandatory clause. The Terms provide that covered causes of action “*shall* be resolved *exclusively* in the U.S. District Court for the Northern District of California or a state court located in San Mateo County.” Ex. A at 16 (emphasis added). Interpreting this exact language, the Northern District of Texas held that Facebook’s forum-selection clause is mandatory because “[t]he words ‘shall’ and ‘exclusively’ are mandatory.” *Wise Guys*, 2023 WL 8434452, at *2. Likewise, the Eastern District of Texas explained that “[w]hether it is interpreted under the law of Texas or California, this [‘shall be resolved exclusively’] language makes clear that Meta’s forum-selection clause is mandatory.” *Texas Nationalist Movement*, Ex. LL at 8. As these other courts have found, the forum-selection clause here is unequivocally mandatory.

C. Plaintiffs’ Claims Fall Within The Clause’s Scope.

Plaintiffs’ claims against Meta fall squarely within the scope of the enforceable, mandatory forum-selection clause. Facebook’s Terms require “that any claim, cause of action, or dispute . . . that arises out of or relates to these Terms or your access or use of the Meta Products shall be resolved exclusively in the U.S. District Court for the Northern District of California.” Ex. A at 16. To fall within this provision, Plaintiffs’ “claims do not have to be about a breach of the parties’ agreement”; they “merely have to ‘relate’ to the Terms” or Meta’s products. *Loomer*, 2020 WL 2926357, at *3 (finding that “[t]he terms of [Facebook’s] forum-selection clause are broad” and encompass even defamation claims).

For two independent reasons, Plaintiffs’ claims fall within the scope of the forum-selection clause here. *First*, each of Plaintiffs’ claims against Meta “arises out of or relates to” Plaintiffs’ “access or use of the Meta Products”—specifically, the Facebook platform. Regardless of the legal theory on which they rest, Plaintiffs’ Meta-related claims depend on the same factual allegations: that Facebook “blocked Natural News’ distribution,” “delet[ed] / wip[ed] out Natural News

entirely,” and “will not allow anyone else to share links from Plaintiffs’ Brighteon.com site.” Am. Compl. ¶ 16. In other words, Plaintiffs’ lawsuit depends on how they used Facebook or how Facebook restricted access to their websites. These are exactly the sort of disputes contemplated by the Parties in the forum-selection clause.

Second, Plaintiffs’ claims against Meta “arise out of or relate to” Facebook’s Terms, which required Plaintiffs to comply with Facebook’s Community Standards. *See* Ex. A at 16. Plaintiffs’ allegations confirm as much. They allege that the conspiracy in which Meta supposedly participates is “effectuated by Big Tech’s arbitrary (unsubstantiated, at the very least) contention that its users’ competitive materials purportedly violated ambiguous ‘Community Standards.’” Am. Compl. ¶ 97. In other words, Plaintiffs dispute the lawfulness of Facebook’s Community Standards and how they are applied, and this dispute is what forms the basis for their case. This is nothing more than a dispute about the Facebook Terms themselves—Terms that make clear that Meta can “remove or restrict access to content that is in violation of” its Community Standards. Ex. A. at 9.

D. The Public Interest Does Not Justify Disregarding the Parties’ Agreement.

When a forum-selection clause is enforceable, mandatory, and encompasses a plaintiff’s claims, that clause must be “given controlling weight in all but the most exceptional cases” affecting the public interest. *Nay v. All. RV, LLC*, 2024 WL 3311428, at *2 (W.D. Tex. Apr. 17, 2024) (quoting *Atlantic Marine*, 571 U.S. at 59-60). The party opposing transfer based on the public interest “bear[s] the burden of showing that public-interest factors *overwhelmingly* disfavor a transfer.” *Atlantic Marine*, 571 U.S. at 67 (emphasis added). And courts have identified only four public-interest factors that may justify disregarding the Parties’ agreement to a forum-selection clause: “(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law

that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws.” *Sobel ex rel. SolarWinds Corp. v. Thompson*, 2023 WL 4356066, at *7 n.6 (W.D. Tex. July 5, 2023) (citing *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004)). Here, none of those factors disfavors transfer, let alone does so “overwhelmingly.”

First, transfer would not overly burden the Northern District of California and would avoid further burdening this Court’s crowded docket. Recent federal data shows that the Northern District of California has a similar median filing-to-disposition time for civil cases as does the Western District of Texas, with a difference of just 0.2 months (approximately six days) between them. See United States Courts, *Table C-5 – U.S. District Courts – Civil Federal Judicial Caseload Statistics* (Mar. 31, 2024), <https://perma.cc/G8NY-N54A>. And as this Court recently noted in an order transferring a case to the Northern District of California, “the Austin division of this district has a particularly heavy civil caseload,” with only one active judge, who is managing the DII docket that alone “has over 900 active civil cases.” *DH Int’l Ltd. v. Apple Inc.*, 2024 WL 4119374, at *5 (W.D. Tex. Aug. 30, 2024). By comparison, the Northern District of California has 24 district judges and 7,226 active civil cases for an average of 301 cases per district judge. See United States Courts, *Table C-3—U.S. District Courts—Civil Statistical Tables For The Federal Judiciary* (June 30, 2024), <https://perma.cc/XUL4-MXFK>. Considerations of court congestion therefore favor transfer.

Second, the local-interest factor supports transfer to the Northern District of California, where Meta and the two other platform Defendants each have a substantial portion of their businesses. Another Texas district court recently found it to be “[o]f particular significance” in granting a motion to transfer, that “the Northern District of California has a strong local interest in deciding this case, given that [Meta] is headquartered in California.” *Moates II*, 2022 WL

2707745, at *5. Additionally, this Court has observed that “the place of the alleged wrong is one of the most important factors in venue determinations.” *BuzzBallz, LLC v. MPL Brands NV, Inc.*, 2024 WL 3282492, at *7 (W.D. Tex. July 2, 2024) (quoting *In re TikTok, Inc.*, 85 F.4th 352, 364 (5th Cir. 2023)). Under Plaintiffs’ theory of the case, their specific injuries—which include “reduced advertising revenue, reduced potential growth, reputational damage, economic cancellation, reduced circulation of reporting and speech, and social media censorship,” Am. Compl. ¶ 213—were allegedly caused by the actions of Meta, X. Corp., and Google. Should the case progress beyond the pleadings, witnesses for the three platform Defendants are more likely to be found within the Northern District of California, *id.* ¶¶ 32-34, than in the Western District of Texas.

Third, this case involves claims under both federal and state law, both of which would be familiar to the Northern District of California. As noted above, *see supra* p. 7 & note 4, “many federal courts have transferred actions brought against [Meta] to the Northern District of California pursuant to Facebook’s forum-selection clauses.” *Moates II*, 2022 WL 2707745, at *5. As these courts observed, “[t]he Northern District of California is thus deeply familiar with suits filed against [Meta] and is well-suited to adjudicate this dispute.” *Id.* Moreover, the Northern District of California is especially familiar with disputes regarding content-moderation decisions made by social-media companies. *See, e.g., Rogalinski v. Meta Platforms, Inc.*, 2022 WL 3219368 (N.D. Cal. Aug. 9, 2022), *aff’d*, 2023 WL 7876519 (9th Cir. Nov. 16, 2023); *O’Handley v. Padilla*, 579 F. Supp. 3d 1163 (N.D. Cal. 2022), *aff’d sub nom. O’Handley v. Weber*, 62 F.4th 1145 (9th Cir. 2023); *Children’s Health Def. v. Facebook Inc.*, 546 F. Supp. 3d 909 (N.D. Cal. 2021), *aff’d sub nom. Children’s Health Def. v. Meta Platforms, Inc.*, 112 F.4th 742 (9th Cir. 2024).

It makes no difference that Plaintiffs also assert state-law claims against Meta. The Northern District of California is of course well-equipped to apply California state law, and Facebook’s Terms are clear that “the laws of the State of California will govern these Terms **and any claim, cause of action, or dispute.**” Ex. A at 16 (emphasis added); *see also Atlantic Marine*, 571 U.S. at 65-66 (“The court in the contractually selected venue should not apply the law of the transferor venue to which the parties waived their right.”). But even if Texas law governs aspects of this dispute, “[f]ederal judges routinely apply the law of a State other than the one in which they sit.” *In re TikTok, Inc.*, 85 F.4th at 365 (citation and internal quotation marks omitted). Indeed, in a case dealing with a motion to transfer arising from this very district, “the Supreme Court ... recognized that the federal courts of other states are able to apply Texas law.” *Wilpritt v. Cap. One Bank USA, N.A.*, 2023 WL 8869366, at *7 (N.D. Tex. Nov. 30, 2023) (citing *Atlantic Marine*, 571 U.S. at 67-68), *report and recommendation adopted*, 2024 WL 1048137 (N.D. Tex. Mar. 11, 2024). Taking into account the Northern District of California’s familiarity with disputes regarding Meta’s services and the likelihood that California law will govern at least some of Plaintiffs’ state-law claims, this factor also favors transfer.

Fourth, there is no conflict-of-laws issue because Plaintiffs and Meta have already agreed that California’s substantive law should apply. *See* Ex. A at 16 (providing that “the laws of the State of California will govern these Terms and any claim” that arises out of or relates to the Terms or Plaintiffs’ use of Facebook). Thus, this factor does not provide a basis to deny transfer.

Because none of the public-interest factors weigh in favor of keeping this dispute in this district, Plaintiffs cannot meet their burden of demonstrating that the public interest “overwhelmingly disfavor[s]” transfer. *Atlantic Marine*, 571 U.S. at 67.

II. The Court Should Transfer The Entire Action Or, Alternatively, Sever The Claims Against Meta.

Plaintiffs' agreement to Facebook's Terms mandates a California forum, so all claims against Meta should be transferred. It would be within this Court's discretion to transfer the entire action to the Northern District of California "in the interest of justice." 28 U.S.C. § 1404(a). That Plaintiffs agreed to a forum-selection clause with at least one of the Defendants means that they cannot now claim that their private interests weigh in favor of keeping this case in Texas. *See In re Rolls Royce Corp.*, 775 F.3d 671, 681 (5th Cir. 2014) (stressing *Atlantic Marine's* "principal conclusion that a reviewing court cannot consider the private interests of a party who entered into a forum selection clause"); *accord id.* at 679 (considering only the interests of non-signatories).

Even if the Court considers private interests—which it should not—those considerations, too, would counsel in favor of transferring the entire action. Plaintiffs could have brought this case in the Northern District of California, a venue where "a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2). And because Meta and the other two platform Defendants each have a substantial business presence in the Northern District of California, this venue would make it easier for the Parties to access relevant evidence and for the likely witnesses to attend trial. *See In re TikTok, Inc.*, 85 F.4th 352, 359 (5th Cir. 2023). Finally, because "this case is still at its infancy," there are no obvious practical problems that would arise from transfer. *BuzzBallz*, 2024 WL 3282492, at *6. Indeed, transfer of the case may resolve personal jurisdiction objections that several of the California-based platform Defendants may assert in this forum.⁵

⁵ Meta preserves the right to challenge personal jurisdiction in the Western District of Texas because the Amended Complaint does not allege facts sufficient to confer jurisdiction here.

Alternatively, the Court should sever and transfer the claims against Meta. *See* Fed. R. Civ. P. 21 (“[T]he court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.”). In *Rolls Royce*, a plaintiff had asserted claims against three defendants “stemming from a helicopter crash.” 775 F.3d at 674. One defendant invoked a forum-selection clause and moved to sever and transfer the claims against it to a different district, but the plaintiff and the other two defendants “opposed the severance and transfer.” *Id.* The district court denied the motion, but the Fifth Circuit granted mandamus relief. As the Fifth Circuit explained, the fact that the plaintiff had signed the forum-selection clause meant that the plaintiff’s interests, “as [a] matter of law, cut in favor of severance and transfer to the contracted for forum.” *Id.* at 681. And though the non-signing defendants opposed transfer too, the Fifth Circuit noted the lack of “evidence in the record indicating special administrative difficulties with severance, or that the interests of the defendants not privy to the clause would be significantly threatened.” *Id.* at 683. So even given the typical discretion district courts have to manage their dockets and rule on motions to sever, the Fifth Circuit found mandamus appropriate. Since then, district courts in this circuit have reached similar conclusions. *See, e.g., Nat’l Shipping Co. of Saudi Arabia v. Valero Mktg. & Supply Co.*, 2019 WL 13036074, at *1, *5 (S.D. Tex. Dec. 26, 2019) (severing and transferring claims against a third-party defendant who “supplied . . . the [very] contaminated fuel” at issue in the underlying case). Thus, if the Court elects not to transfer the entire action to the Northern District of California, it should at least sever and transfer Plaintiffs’ claims against Meta.

CONCLUSION

For the foregoing reasons, Meta respectfully requests that the Court transfer this action to the Northern District of California pursuant to 28 U.S.C. § 1404(a). In the alternative, Meta requests that this Court sever and transfer the claims against Meta to the Northern District of California.

Dated: September 27, 2024

Respectfully submitted,

/s/ Zack C. Ewing

Zack C. Ewing
State Bar No. 24113650
KIRKLAND & ELLIS LLP
401 Congress Avenue
Austin, TX 78701
Telephone: (512) 678-9050
Facsimile: (512) 678-9101
zack.ewing@kirkland.com

Kasdin M. Mitchell (*pro hac vice*)
Jordan L. Greene (*pro hac vice*)
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 389-5000
Facsimile: (202) 389-5200
kasdin.mitchell@kirkland.com
jordan.greene@kirkland.com

Counsel for Defendant Meta Platforms, Inc.

CERTIFICATE OF CONFERENCE

The undersigned certifies that, on August 22, 2024, pursuant to Local Rule CV-7(g), counsel for Meta conferred with Plaintiffs' counsel, who indicated that Plaintiffs are opposed to the relief sought in this Motion.

/s/ Zack C. Ewing

Zack C. Ewing

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2024, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send e-mail notification of this filing to all counsel of record.

/s/ Zack C. Ewing

Zack C. Ewing